



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Argus Services, Inc.

File: B-226164

Date: April 21, 1987

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### DIGEST

Contracting agency properly considered the low bid responsive, even though individual sureties submitted on the bid bond pledged the same assets, where the bid bond was legally sufficient to establish the joint and several liability of the sureties and where affidavits submitted disclosed a net worth which was more than adequate to cover the requirement that each surety have a net worth equal to the difference between the low bidder's price and the price of the next low acceptable bid.

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### DECISION

Argus Service, Inc., protests the award of a contract to the A.J. Fowler Corporation under invitation for bids (IFB) No. N62467-87-B-2010, issued by the Department of the Navy for the procurement of maintenance services for the grounds at the Pensacola Naval Complex, Florida. Argus contends that the Navy improperly allowed Fowler to correct its allegedly defective bid bond after bid opening. According to Argus, Fowler's bid is nonresponsive because the individual sureties submitted by Fowler as bid security pledged the same assets and because Fowler's bid bond was otherwise defective in form and content.

We deny the protest.

The IFB required bidders to submit bid bonds for 20 percent of the bid prices. Four bids were received by bid opening on December 30, 1986. Fowler's bid was the lowest and Argus's bid was the second lowest. Fowler submitted individual sureties as bid security who completed separate affidavits of net worth (Standard Form 28), but each affidavit listed identical assets and indicated an identical net worth of \$2,000,000. The difference in price between Fowler's low bid and the next acceptable bid was \$97,439. The bidders were told by the contracting officer that the validity of Fowler's bid bond would have to be

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determined by the Southern Division, Naval Facilities Engineering Command. Subsequently, the Southern Division first mistakenly concluded that Fowler's bid was nonresponsive because the bid bond did not contain its execution date and was supported by only one affidavit from a B.J. Fowler, an individual surety. The Navy's procurement office then discovered that it had inadvertently failed to submit to the Southern Division the affidavit of A.J. Fowler, the second individual surety. This affidavit had also been received with the bid and the bid bond. Upon receipt of the second affidavit, the Southern Division found the bid bond and its two affidavits acceptable, subject to verification of the listed assets. The Navy then also waived as a minor informality the failure of the bid bond to contain the date of its execution.

After first being erroneously informed that Argus was the apparent low bidder because of an improper bid bond submitted by Fowler, Argus was then told on January 22, 1986, that the Navy's decision had been reversed and that Fowler was being considered for the award. This protest followed.

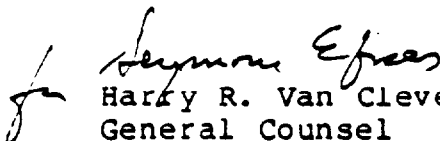
We first note that, contrary to the protester's assertion, the Navy did not allow Fowler to correct its allegedly defective bid bond after bid opening but, rather, simply determined that Fowler's bid was responsive because the bid bond, with its accompanying affidavits of individual surety, was not defective. We agree with the Navy's determination.

The test to be applied in determining the responsiveness of a bid is whether the bid as submitted is an offer to perform without exception, the exact thing called for in the invitation, and upon acceptance will bind the contractor to perform in accordance with all the invitation's material terms and conditions. 49 Comp. Gen. 553, 556 (1970). This determination of responsiveness must be made from the bid documents at the time of bid opening. Peter Gordon Co., Inc., B-196370, July 18, 1980, 80-2 CPD ¶ 45. We have held that a solicitation provision calling for a bid guarantee is a material requirement which cannot be waived. 38 Comp. Gen. 532 (1959). We have also recognized that a bid is nonresponsive where either the required bond is not submitted, de Weaver and Associates, B-200541, Jan. 6, 1981, 81-1 CPD ¶ 6, or the submitted bond contains a deficiency which detracts from the joint and

several liability of the sureties on the bond. See Structural Finishing, Inc., B-201614, Apr. 21, 1981, 81-1 CPD ¶ 303, and Southland Construction Co., B-196297, Mar. 14, 1980, 80-1 CPD ¶ 199 (bid nonresponsive where bond was altered without any evidence of approval by the surety); Cassidy Cleaning, Inc., B-191279, Apr. 27, 1978, 78-1 CPD ¶ 331 (blank bid bond submitted).

Here, the bid bond furnished by Fowler was duly executed by two individual sureties whose affidavits indicated that they both had net worths at least equal to the penal amount of the bond and was not otherwise defective on its face; both sureties expressly agreed to indemnify the government in a specified amount. The bond thus met the solicitation's bonding requirement and was legally sufficient to establish the joint and several liability of the sureties in the event of default on the bid by Fowler. In this regard, there is no requirement that there be two separate pools of assets for each surety. See Fitts Construction Co., 62 Comp. Gen. 615 (1983), 83-2 CPD ¶ 190. Further, we note that the net worth of individual sureties need only be equal to the difference between the bidder's price and the price of the next low acceptable bid. See Federal Acquisition Regulation (FAR), 48 C.F.R. § 28.101-4(b) (1986). As stated above, the difference in this case is \$97,439. The net worth disclosed by the affidavits was \$2,000,000, which is clearly adequate to cover each surety's obligation.<sup>1/</sup> Thus, there is no basis for concluding that the sureties were not acceptable. Moreover, as the bid bond was properly executed for the proper amount and listed the number of the procurement and its opening date, we agree with the Navy that the lack of execution date was of no significance and could be waived. Brener Building Maintenance Co., Inc., B-219682, Oct. 28, 1985, 85-2 CPD ¶ 475.

The protest is denied.

  
Harry R. Van Cleve  
General Counsel

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<sup>1/</sup> Argus also speculates that the assets listed by the individual sureties may also include some belonging to the corporation which is the principal on the bond. The awardee denies this allegation and there is nothing in the record to support the protester's contention. Moreover, this allegation is a matter of responsibility for determination by the contracting officer. See Hispanic Maintenance Services, B-218199, Apr. 22, 1985, 85-1 CPD ¶ 461.